UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,706	09/01/2000	Gilberto Arnaiz	SIEB012/01US	5924

				EXAMINER
25096	7590	11/29/2004		WOOD, WILLIAM H

PERKINS COIE LLP
PATENT-SEA
P.O. BOX 1247
SEATTLE, WA 98111-1247

ART UNIT	PAPER NUMBER
2124	

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>24 August 2004</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>53-60</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>53-60</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
    application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claims 53-60 are pending and have been examined.

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 .

August 2004 has been entered.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   Claim 53, 54 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Cyber Media, Incorporated (EP 0 811 942 A2), herein referred to as **Cyber Media**,

in view of **Furtney** et al. (USPN 5,579,509).

Claim 53

Cyber Media disclosed a method for a server computer to distribute and install software

upgrades on client computers *(page 2, lines 5-10)*, comprising:

under control of the server computer,

defining contents of software version upgrade kits of software installed on client

computers, the software version upgrade kits each being self-contained and comprising

files, actions, and an upgrade wizard to upgrade a software components from one

version to another version *(page 6, lines 35-36; page 8, lines 1-3; page 9, lines 10-20,*

self-extracting archives that install necessary files, "self-contained");

writing the contents (see page 12, line 55 to page 13, line 56) of the software

version upgrade kits to a database on the server computer as a table of contents, the

table of contents showing for each of the upgrade kits the contents of that upgrade kit

and any software components required for an upgrade using that upgrade kit *(page 8,*

lines 5-51); and

for each of multiple client computers,

comparing the table of contents of the software version upgrade kits to

software installed on that client computer to determine one or more software version

upgrade kits that will each effect an upgrade on that client computer from a version of a

software component currently installed on that client computer to an updated software

component version *(page 6, lines 10-13)*; and

building copies of the determined software upgrade kits for that client

computer from the table of contents *(page 6, lines 35-36; page 8, lines 46-51; page 9,*

lines 1-32); and

for each of the multiple client computers,

determining whether software components for a program that is currently running

on that client computer are up-to-date *(page 6, lines 6-26; checks all software, running*

or not); and

when one or more software components of the program are not up-to-date,

notifying the server computer of the determined installed versions of the

not-up-to-date software components on that client computer *(page 6, lines 6-13)*;

downloading copies of software upgrade kits built on the server computer

for that client computer to upgrade the not-up-to-date software components *(page 6,*

lines 35-36);

for each of the downloaded software upgrade kits, invoking the upgrade

wizard for that software upgrade kit on that client computer to upgrade one of the not-

up-to-date software components on that client computer, the upgrade wizard performing

the software component upgrades by performing the actions of the upgrade kit and

using the files of the upgrade kit *(page 9, lines 1-32)* the upgrade wizard keeping track

of the upgrade's progress and automatically recovering from errors *(page 6, line 49 to*

page 7, line 21; page 11, lines 1-40; page 17, line 57 to page 18, line 17; system clearly

installs and monitors the updates and recovers automatically based upon archive files

when an user is dissatisfied or in "error"; also note page 9, lines 1-20 including upgrade

wizard); and

after the upgrading of the not-up-to-date software components, restarting

execution of the program so as to use the upgraded software components *(page 5, line*

5 to page 6, line 9; page 6, lines 49-59).

Cyber Media did not explicitly state interrogating other installed software components on that client computer to determine the version of those not-up-top-date software components that are installed on that client computer (interpreted as: interrogating other installed software on that client computer to determine affected dependent software components that are installed on that client computer). **Furtney** demonstrated that it was known at the time of invention to analyzing dependent software components (abstract; column 2, lines 30-56; and column 3, lines 30-50). It would have been obvious to one of ordinary skill in the art at the time of invention to implement the component updating system of **Cyber Media** with interrogating for dependent components as found in **Furtney**'s teaching. This implementation would have been obvious because one of ordinary skill in the art would be motivated to provide compatible versions of components in order to ensure correct operation of a system (column 1, line 5 to column 2, line 28).

Claim 54

Cyber Media and **Furtney** disclosed the method of claim 53 including:

- before the performing of an upgrade of a software component, creating a backup of local files _(page 11, lines 21-33)_;

- tracking progress of the performing of the upgrade _(page 6, lines 49-59)_;

- ◆ rolling back changes made during the performing after an error occurs *(page 17, line 56 to page 18, line 27; error is simply a user who no longer wants the upgrade, dissatisfied)*;

- ◆ instantiating the local file backup *(page 17, line 56 to page 18, line 27)*; and

- ◆ restarting the upgrade from a save point *(page 11, lines 29-30 and 38-39; save point is that which came before installation/update)*.

Claim 56

Cyber Media and **Furtney** did not explicitly disclose the method of claim 53 including downloading one or more upgrade kits for software components to a client computer before the software component is required on the client computer. **Cyber Media** demonstrated that it was known at the time of invention to provide *timely* information about available updates/upgrades (page 14, lines 1-8) as well as automated applications for installation of updates (page 14, lines 18-20). It would have been obvious to one of ordinary skill in the art at the time of invention to implement the updating system disclosed by **Cyber Media** with downloading the updates before required (in other words, as soon as available) as suggested in **Cyber Media**'s teaching. This implementation would have been obvious because one of ordinary skill in the art would be motivated to reduce burden on the user (page 14, lines 18-20) and make sure software will remain useful (page 14, lines 1-8, *timely* notification meaning in time to use or be useful; page 5, lines 44-47, updating at predefined times).

4.   Claim 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyber

Media, Incorporated (EP 0 811 942 A2), herein referred to as **Cyber Media**, in view of

Furtney et al. (USPN 5,579,509) in further view of **Kirouac** et al. (USPN 5,155,847).

Claim 55

Cyber Media and **Furtney** did not explicitly state the method of claim 53 comprising

monitoring progress of the performing of an upgrade of a software component on a

client from a server. **Kirouac** demonstrated that it was known at the time of invention to

monitor progress of a client from a server (column 9, lines 34-63). It would have been

obvious to one of ordinary skill in the art at the time of invention to implement **Cyber

Media**'s system of updates with verification from a server as found in **Kirouac**'s

teaching. This implementation would have been obvious because one of ordinary skill

in the art would be motivated to prevent errors in transmission and verify results from a

central administrative controlled point.

5.   Claim 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyber

Media, Incorporated (EP 0 811 942 A2), herein referred to as **Cyber Media**, in view of

Furtney et al. (USPN 5,579,509) in further view of Siebel Systems, "Siebel Systems:

Siebel announces production shipment of Siebel Enterprise Applications Version 3.0",

herein referred to as **Siebel Systems**.

Claim 57

Cyber Media and **Furtney** did not explicitly state the method of claim 53 wherein the

currently running program on the multiple client computers is database management

software, and wherein the upgraded software components include database schemas.

Siebel Systems demonstrated that it was known at the time of invention to upgrade

database schema (page 2, third paragraph from bottom, bold text). It would have been

obvious to one of ordinary skill in the art at the time of invention to implement **Cyber**

Media's updating software with database upgrading as found in **Siebel Systems'**

teaching. This implementation would have been obvious because one of ordinary skill

in the art would be motivated to provide updates/upgrades and installations to as many

products as possible for business purposes in addition to reducing downtime (page 2,

third paragraph from bottom, **Siebel Systems**).

6.   Claim 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Cyber Media, Incorporated (EP 0 811 942 A2), herein referred to as **Cyber Media**, in

view of **Furtney** et al. (USPN 5,579,509) in further view of Dictionary of Computing

herein referred to as Computing.

Claim 58

Cyber Media disclosed the limitations of claim 58 substantially same as for claim 53

above with limitations of 57, which are incorporated herein. However, **Cyber Media** did

not teach *docking*. **Computing** demonstrated that it was known at the time of invention

to dock computers (page 149). It would have been obvious to one of ordinary skill in the

art at the time of invention to implement **Cyber Media**'s updating system with docking

as found in **Computing**'s teaching. This implementation would have been obvious

because one of ordinary skill in the art would be motivated to expand the usefulness of

the **Cyber Media** system to as many client computers as possible, including mobile

ones requiring docking.

Claim 59

In regard to claim 59, the limitations correspond to the limitations of claims 54 and 56

and are rejected the same herein.

7. Claim 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyber

Media, Incorporated (EP 0 811 942 A2), herein referred to as **Cyber Media**, in view of

Furtney et al. (USPN 5,579,509) in further view of Dictionary of Computing herein

referred to as Computing as applied to claim 58 and in further view of Kirouac et al.

(USPN 5,155,847). The limitations correspond to the limitations of claims 55 and are

rejected the same herein.

Response to Arguments

8. Applicant's arguments filed 24 August 2004 have been fully considered but they

are not persuasive. Applicant argued: [1] **Cyber Media** did not disclose self-contained

upgrade kits with upgrade wizards; [2] **Cyber Media** did not disclose upgrade kits built on

server; and [3] **Cyber Media** does not monitor progress and recover from errors.
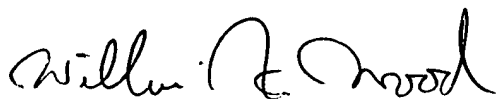
As to the first and third points, these issues are directly addressed in the

rejections using citations from the prior art (see above). As to the second issue, the

upgrade kits are clearly built upon and even stored on the server computer (page 7,

lines 54-59; page 8, line 46; page 12, line 55 to page 13, line 56). Having addressed

Applicant's raised issues, the rejections are maintained.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should
be directed to William H. Wood whose telephone number is (571)-272-3736. The examiner can normally
be reached 9:00am - 5:30pm Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,
Kakali Chaki can be reached on (571)-272-3719. The fax phone numbers for the organization where this
application or proceeding is assigned are (703)872-9306 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be
directed to the receptionist whose telephone number is (703)305-3900.

William H. Wood
November 22, 2004

ANIL KHATRI
PRIMARY EXAMINER